

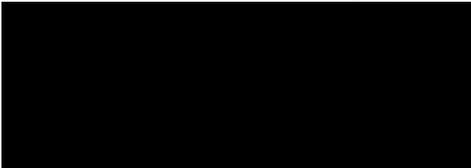
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**U.S. Citizenship  
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Services**

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FILE:



Office: SAN DIEGO, CA

Date: JUN 21 2005

IN RE:

Applicant 

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on [REDACTED]. The applicant's father [REDACTED] was born in Mexico on [REDACTED]. He derived U.S. citizenship at birth through his mother. The applicant's mother, [REDACTED] was born in Mexico, and she was not a U.S. citizen. The record reflects that the applicant's parents married in Mexico on May 1, 1949. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act), based on the claim that she acquired U.S. citizenship at birth through her father.

The district director found that the applicant had failed to establish her father was physically present in the United States for ten years prior to her birth, at least five years of which occurred after [REDACTED] reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that the documentation submitted by the applicant establishes by a preponderance of the evidence that [REDACTED] met the physical presence requirements set forth in section 301(a)(7) of the former Act. Counsel indicates further that the applicant has previously been determined to be a U.S. citizen and that affidavit evidence contained in the record establishes that a U.S. Immigration and Naturalization (Service, now U.S. Citizenship and Immigration Services, CIS) seal was embossed on the applicant's birth certificate when she was an infant.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on October 2, 1956. Section 301(a)(7) of the former Act is therefore applicable to her derivative citizenship claim.

Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possession for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present matter, the applicant must establish that her father was physically present in the U.S. for ten years between May 7, 1930 and October 2, 1956, and that five of those years occurred after May 7, 1944, when [REDACTED] turned fourteen.

The evidence relating to [REDACTED] physical presence in the United States during the requisite time period consists of the following:

[REDACTED] Form N-600, Application for Certificate of Citizenship (N-600 application), filed on January 24, 1952, stating in pertinent part that his mother resided in the United States from 1906 to 1910, and from 1946 to the date the N-600 application was filed, and stating that he resides in Oceanside, California and arrived in the United States at El

Paso, Texas on January 20, 1952.

A Form N-565, Application for a New Naturalization or Citizenship Paper (N-565 application), filed by [REDACTED] By [REDACTED] on February 15, 1967, stating that he resides in Oceanside, California, and that he arrived in the United States at El Paso, Texas on June 13, 1946.

An N-565 application filed by [REDACTED] on April 24, 1968, stating that he resides in Oceanside, California, and that he arrived in the United States at El Paso, Texas on June 24, 1946.

An N-565 application filed by [REDACTED] in December 1977, stating that he resides in Oceanside, California, and that he arrived in the United States at El Paso, Texas on December 16, 1948.

A Texas Birth Certificate for the applicant's sister, [REDACTED] reflecting that she was born in Texas to [REDACTED] and [REDACTED] on [REDACTED]

A Texas Delayed Birth Certificate for the applicant's sister, [REDACTED] reflecting that she was born in Texas to [REDACTED] and [REDACTED] on August 6, 1953.

A Social Security Administration earnings statement for Mr. [REDACTED] reflecting the following U.S. earnings:

1947 - \$215.18 (working for the Railroad)  
1951 - \$646.00  
1953 - \$144.00  
1954 - \$108.00  
1955 - \$361.20  
1956 - \$1857.08

The applicant's N-600 application stating that [REDACTED] resided in the United States from 1950 to 1997.

An affidavit signed on June 4, 2004, by the applicant's paternal aunt, [REDACTED] stating that [REDACTED] arrived in the United States in May of 1946.

The record additionally contains a statement by the applicant and an affidavit signed on June 21, 2004, by the applicant's husband, [REDACTED] stating that the applicant's birth certificate contained an embossed seal from the U.S. Immigration and Naturalization Service.

The AAO notes that the evidence in the record contains several discrepancies relating to the dates that [REDACTED] entered the United States. The AAO notes further that aside from the Social Security Administration U.S. earnings history submitted by the applicant, the record contains no other direct evidence to establish when [REDACTED] was physically present in the U.S. prior to the applicant's birth. Moreover, the AAO notes that [REDACTED] Social Security Administration U.S. earnings history contains significant gaps and that overall, it reflects low income earnings for the years reflected.

The AAO finds, however, that in the present matter, it is not necessary to address the above concerns. The AAO finds that even if the applicant established that [REDACTED] was physically present in the U.S. for one year between 1946 and 1947, for one year in 1951, and for four years between 1952 and 1956, the total would add

up to only seven years of U.S. physical presence. Section 301(a)(7) of the former Act requirements therefore have not been met.

The AAO finds further that the applicant has failed to establish that the Service (now CIS) previously determined that she is a U.S. citizen. The AAO notes that neither the record nor CIS centralized computer databases contain any information or evidence to indicate that the Service has previously made a U.S. citizenship determination in the applicant's case. The AAO finds further that in and of themselves, the statements that the applicant's birth certificate contained an embossed Service seal lack probative value regarding the applicant's U.S. citizenship status.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant failed to establish by a preponderance of the evidence that her father was physically present in the U.S. for ten years, at least five of which were after the age of fourteen. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.